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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 223

DELTA AIR LINES, INC., *Petitioner*,

v.

ARTHUR E. SUMMERFIELD, Postmaster General of the United States, and THE UNITED STATES OF AMERICA, on behalf of the Postmaster General, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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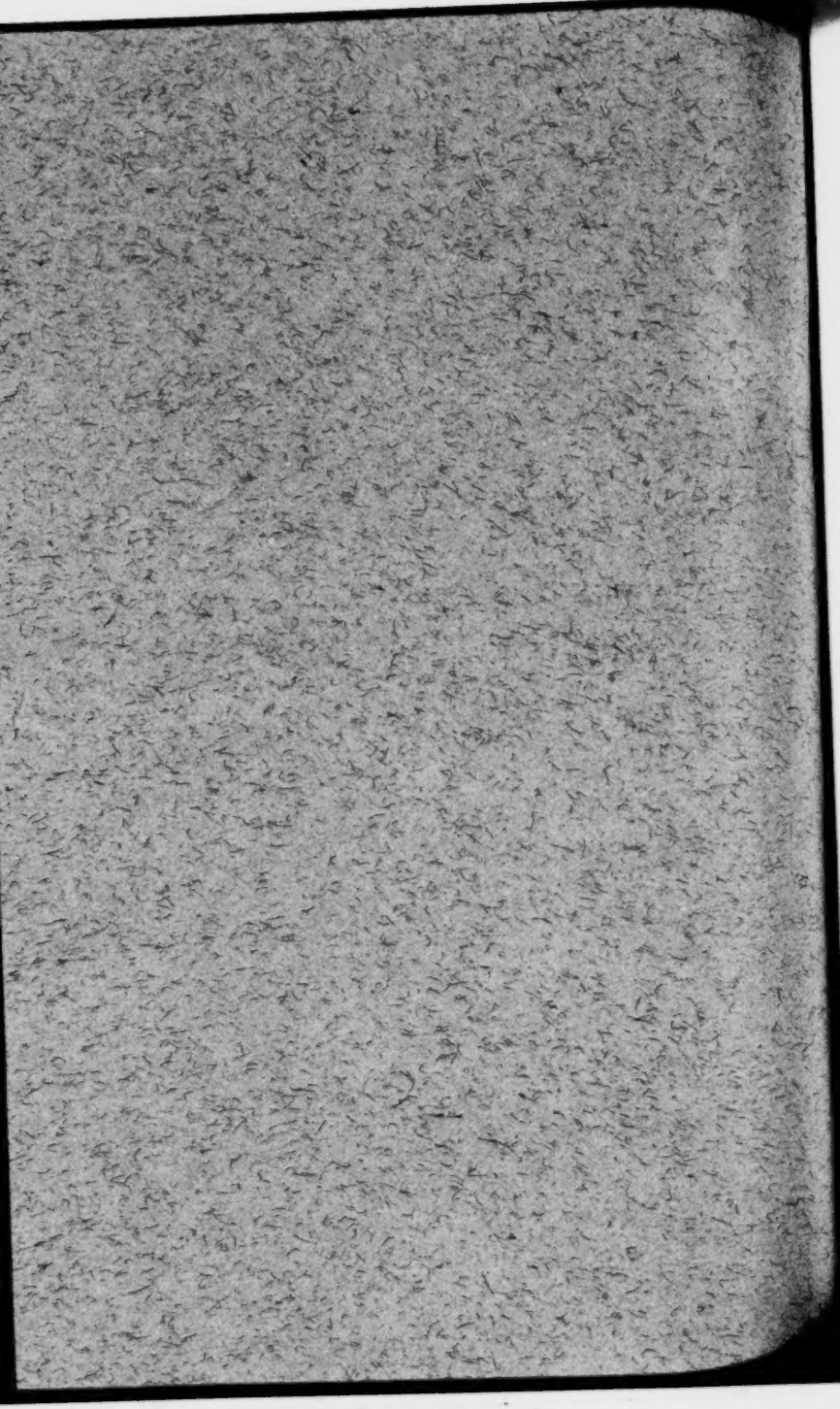

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Delta Air Lines, Inc., Petitioner herein (substituted as a party Intervenor for Chicago and Southern Air Lines, Inc. (R. 79), Intervenor below, by reason of a corporate merger in which Petitioner was the continuing corporation) prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in *Arthur E. Summerfield, Postmaster General of the United States, et al* v. *Civil Aeronautics Board, et al, No. 11351,* on May 4, 1953.

OPINION BELOW

The opinion of the Court of Appeals for the District of Columbia Circuit (R. 68) is not yet reported. The

opinion of the Civil Aeronautics Board (R. 51) is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on May 4, 1953 (R. 78). The jurisdiction of this court is invoked under Title 28, United States Code, Section 1254(1) and Title 49, United States Code, Section 646(f).

QUESTIONS PRESENTED

1. Whether the Civil Aeronautics Act does, or does not, authorize the Civil Aeronautics Board, where the domestic operations and the international operations of an air carrier engaged in both had been determined by the Board to be separate classes of service for rate making purposes, to offset any of the revenues derived from the carrier's domestic services during a past three-year period of final and closed air mail rates against such carrier's requirements for compensation under the Act in its international operations for which air mail rates were being fixed retroactively for such period in the proceeding here in question.

2. Whether, if the answer to Question 1 is in the affirmative, the Board may exercise its discretion as to whether or not, for reasons of public interest, any such possible offset of revenues derived from the carrier's domestic class of service shall be made in whole or in part, or not at all, in fixing air mail rates for the carrier's international class of service.

3. Whether the decision below by the Court of Appeals effects a recapture of earnings of the air carrier under a closed rate in its domestic class of service contrary to the construction of the mail rate provisions of the Civil Aeronautics Act laid down by the United States Supreme Court in *Transcontinental & Western Air, Inc.* v. *Civil Aeronautics Board,* 336 U. S. 601 (1949).

4. Whether the Board, in fixing mail rates for an air carrier may give weight to rate-fixing policies desirable in the public interest for the air transportation industry as a whole and, therefore, for the particular air carrier (for which rates are being fixed) as an integral part of such industry.

STATUTES INVOLVED

The pertinent provisions of the Civil Aeronautics Act of 1938, as amended,[1] which will be referred to as the Act, are set forth in the Appendix hereto.

STATEMENT

Chicago and Southern Air Lines, Inc. (hereinafter called "C&S") during the period relevant to this case conducted domestic air transport operations over routes extending between Chicago and Detroit, on the one hand, and Houston and New Orleans, on the other, and international air transport operations over routes extending between the two last mentioned cities and Caracas, Venezuela via Havana and Kingston. The certificates of public convenience and necessity for both operations authorize the transportation of mail. persons, and property. This case concerns the fair and reasonable rates of compensation for the transportation of mail to which C&S is entitled under the Civil Aeronautics Act for transporting mail by aircraft in its international operations during the period from January 1, 1948, to December 15, 1950.

The Board, in July 1948, fixed, among other things, final mail rates effective January 1, 1948, for the air transport operations of C&S[2] over its domestic air transport routes

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[1] Act of June 23, 1938, c. 601, 52 Stat. 977, as amended, 49 U.S.C. 401, *et seq.*

[2] Chicago and Southern Air Lines, Inc., has since merged with Delta Air Lines, Inc., by statutory corporate merger, Delta being the surviving corporation. Delta has been substituted as an Intervenor herein subsequent to the decision of the Court of Appeals (R. 79).

(appropriate allocations having been made by the Board of costs and investment between the domestic and the international air services of C&S.) This decision of the Board is reported in *Chicago and Southern Air Lines, Inc., Mail Rates,* 9 C.A.B. 786. The final rates so established in that case for the domestic routes of C&S remained in effect and unchallenged by the Postmaster General or anyone else during each of the years 1948, 1949, and 1950. Those rates were fixed on a sliding scale related to the percentage of passenger seats occupied to seats available (load factor) and were estimated by the Board to produce varying rates of return after taxes upon the C&S investment allocated by the Board to the domestic air services. The Board's actual language in showing these estimated rates of return and certain other possible earnings which it approved is quoted in the footnote.[3]

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[3] ". . . The operating income per revenue plane mile before Federal income taxes, and the rate of return on recognized investment after income taxes at 38 percent, for various load factors indicated, are presented below.

Revenue passenger load factor	Operating income before income tax, per revenue mile	Percent return on recognized investment after income taxes at 38%
Percent	Cents	Percent
50	—3.85	(1)
55	3.87	3.6
60	7.90	7.3
65	11.03	10.2
70	14.16	13.1

[1] The loss of 3.85 cents per revenue mile is equivalent to a loss of 5.7 percent on recognized investment, without allowance for Federal tax credits.

From the above tabulation, it appears that C&S under honest, economical, and efficient management may be expected to earn a rate of return, over an annual period, of 7.3 percent, with a 60 percent annual revenue passenger load factor. At the forecast passenger load factor of 60.09 percent, the estimated rate of return

Subsequently, and in a separate proceeding from that in which the final rates for the domestic routes were fixed, the Board, on October 18, 1951, fixed final mail rates for the air transport operations of C&S over its international routes, retroactively for the period from November 1, 1946 to December 15, 1950, and prospectively from December 16, 1950 (R. 51). It is this proceeding for the fixing of the mail rates for the international services which is now before the Court.

The Postmaster General filed objections to the Board's Tentative Findings and Conclusions in the proceeding on the mail rates for the international routes, and also filed a Petition for Reconsideration of the Board's final order therein, in which he contended that the Act required the Board to offset against the mail pay to be received on the C&S international routes for the past period 1948-1950, the amount by which C&S's net profits on its domestic routes under the forecasted passenger load factor during the same period had exceeded a 7.4% rate of return on investment. C&S had averaged a 12.51% annual rate of return on its domestic operations for those years. The Postmaster General argued that the difference between a 7.4% return and the 12.51% return (approximately

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after taxes is 7.4 percent. It should be noted that with an average annual passenger load factor of 60 percent, the average base mail rate will amount to 29.8 cents per airplane mile, but the average effective mail rate will amount to approximately 26 cents per revenue plane mile flown.

An extra cushion against unforeseen developments will be provided to the extent that C&S succeeds in developing additional revenues from express, freight, and incidental sources above the level forecast for the future period. Similarly, any economies which the carrier's management succeeds in accomplishing through effective cost controls or improved operating procedures and techniques, which serve to avert or mitigate anticipated increases in prices and to decrease operating costs below the unit cost of 116.6 cents per revenue plane mile estimated herein, will inure to the carrier in the form of higher earnings." *Chicago and Southern Air Lines, Inc., Mail Rates*, 9 C.A.B. 786, 812 (1948).

$654,000 for the three years 1948-1950) constituted "excess profits" of the domestic services of C&S and was "other revenue" which, under Section 406(b) of the Act (see the Appendix hereto), was, as a matter of law, required to be applied in reduction of the amount of "need" of the air carrier determined by the Board for the international services.

C&S opposed these contentions, urging, *inter alia*, that by the explicit terms of the Board's Order, to which the Postmaster General made no objection, the Board's findings in its opinion fixing the C&S domestic rates were not intended to, and did not, impose a ceiling on the earnings of C&S's domestic division and that the Act neither required, nor permitted, the offset proposed by the Postmaster General.

The Board in its final opinion in the proceeding fixing the C&S international rates, issued October 18, 1951 (R. 51), rejected the Postmaster General's contention, saying, *inter alia*, ". . . we believe that we are not required by Section 406(b) to reduce the carrier's mail pay with any part of such other revenue if there are sound reasons for not doing so as a matter of economic policy" (R. 54). The Board did not pass upon its power to make such an offset (R. 55) but concluded that, for the reasons of public policy set out in detail in its final opinion, the offset contended for by the Postmaster General should not be made.

On appeal by the Postmaster General, the court below held (Judge Prettyman dissenting) that the Board was required by Section 406 of the Act to offset, against the amount of mail compensation determined to be required for the international services, the so-called "excess profits" on the carrier's domestic services during the 1948-1950 period.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

(1) In holding that the Civil Aeronautics Board, in fixing air mail rates for an air carrier for its international services as a separate class of service and as a separate rate-making unit from the domestic services of the carrier, was required by Section 406 of the Civil Aeronautics Act to offset any of the carrier's earnings on the domestic services against the carrier's "need" for mail compensation on its international services;

(2) In holding that the direction of Section 406 of the Act to the effect that the Board, in fixing air mail rates for a particular class of the carrier's services, shall take into consideration the "need" of the carrier for certain developmental purposes includes a requirement that the Board go outside such class of service and ascertain whether there are any other revenues of the air carrier arising in some other class of service which could possibly be so offset;

(3) In quoting the statute to the effect, and in holding, that it is the duty of the Board under Section 406 of the Act, in fixing air mail rates, "to 'take into consideration, among other factors, . . . all other revenue of the air carrier' ". (Page 5 of Opinion of the Court below, R. 72);

(4) In holding that Section 406 of the Civil Aeronautics Act does not vest discretion in the Board as to the extent if any to which, in fixing air mail rates for an air carrier's international class of services, it will offset against the carrier's "need" for air mail compensation for such services certain other revenue of the carrier derived from its domestic class of services;

(5) In holding that Chicago and Southern had received excess earnings on its domestic services;

(6) In holding that the Board's determination was unlawful insofar as it gave effect, for reasons of public interest, to rate fixing policies of importance to the air trans-

port industry as a whole in fixing the rates of a sin
rier which is an integral part of that industry;

(7) In holding that as a matter of law the Boar
thorized, and required to effect a recapture of pas
ings of an air carrier on its domestic services under
tic mail rates which had long been closed and with
to which no proceeding was pending, by offsettir
earnings against the carrier's "need" for mail co
tion on its international services, in a subsequent p
ing in which the only issue was the fixing of mail r
the international services; and

(8) In setting aside the order of the Board.

REASONS FOR GRANTING THE WRIT

**1. The Court Below, in a Divided Decision, Has Ad
Construction of a Statute of the United States on
tion of Wide Importance, Which Construction Will
Immediate Importance Far Beyond the Particular F
Parties Involved and Will Have a Continuing Effe
Important Considerations of Public Interest and
Policy.**

A divided court below has created a national p
The majority may not have realized this. There is
cussion of it in the opinion. If the Civil Aeronautics
is forced to follow the decision below, the result so
later will be to drive domestic air carriers out of a
stantial international operations into which several
have been certificated during the last ten years u
carefully developed national policy.[4] Thus the n

[4] TWA, a domestic air carrier, was issued a certificate fo
across the North Atlantic to Europe and to Africa and be
the Orient. Braniff Airways, a domestic air carrier, wa
a certificate for a route from the United States thro
Caribbean and down the west coast of South America to
Janeiro and Buenos Aires. Northwest Airlines, a dome
carrier, was issued a certificate for routes from the Unite
across the North Pacific to points in Asia. Chicago and S

air policy of the United States as it concerns international operations of United States air carriers will be seriously affected and the so-called "chosen instrument," i.e., one United States international air operator, not engaged in domestic air operations, is apt to be left alone in the field, in the status it enjoyed during the infancy of international air services and before the development of such national air policy. This result will follow, not as a result of national policy determinations (which have been to the contrary) but because of the decision below by two Judges.

This result will follow because domestic air carriers engaged in both domestic and international air operations must compete domestically with other domestic air carriers who are not engaged in international operations. If those who do so compete are to have their domestic earnings siphoned off to subsidize the admittedly economically weaker (R. 54) international operations, good business sense, as well as survival domestically, will move them out of the international field.[5]

Air Lines (now Delta), a domestic air carrier, was issued a certificate for routes from the United States to Carribbean points and the North coast of South America.

Detailed statements of the reasons underlying the policies adopted by this Government with respect to its international air transport system are set out in the following: *Hearings Before the Subcommittee on Aviation of the Committee on Commerce, United States Senate 79th Congress, 1st Session, on S. 326; Hearings Before the Committee on Interstate and Foreign Commerce, House of Representatives, 80th Congress, 1st Session, on Bills Relative to Overseas Air Transportation; Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce, United States Senate, 80th Congress, 1st Session, on S. 987; American Export Airlines, Trans-Atlantic Service, 2 C.A.B. 16, Northeast Airlines, et al, North Atlantic Route Case,* 6 C.A.B. 319; "Survival in the Air Age," A Report by the President's Air Policy Commission, January 1, 1948, pages 118-119.

[5] This applies to all international routes operated by domestic air carriers where the international routes are substantial compared to the total operations of the carrier.

This alone justifies and requires the Supreme Court to review this case and direct the proper course under the federal statutes in question.

The offset between the international "need" and domestic earnings of an air carrier required by the majority of the Court of Appeals will place the air carrier operating both international and domestic services in such a position that it not only loses its incentive to continue operating international services but also has its competitive position in its domestic services seriously impaired. As noted earlier, the international services are economically weaker than the domestic. Therefore, the air carrier can only look forward in the indefinite future, under the Court of Appeals decision, to a constant draining off of its domestic earnings for the financial support of its international operations. Domestic air carriers operating international routes compete domestically with air carriers engaged exclusively in domestic services whose domestic earnings are not subjected to such diversion. Under such circumstances the air carriers operating both types of service could not maintain the same level of domestic earnings as their competitors and necessarily would compete at a great disadvantage. In such a situation, the air carrier's alternative is to withdraw from international operations in order to maintain its competitive position in the larger domestic market.

Other public interest objectives which the Board has found to exist with respect to domestic air services also would be jeopardized under the decision of the court below.

The increasing public acceptance of air transport in recent years has made it possible for the Board to place a substantial number of domestic air carriers on uniform service mail rates for domestic services without including any element of subsidy payments. Necessary further improvements in earnings can open the way for reductions in passenger and cargo rates, increases in the volume of air coach services, and other benefits to the public.

But the offset doctrine advanced by the Court of Appeals would submit the domestic operations of the domestic air carriers operating international services to the debilitating financial drain of subsidizing their international services. The effect of this is particularly critical because, as noted above, a substantial proportion of the domestic services are on uniform service mail rates. Furthermore, it is axiomatic that domestic passenger and cargo rates must, for competitive reasons, be substantially the same as between carriers. Consequently, the air carriers operating both domestic and international services cannot, under the principles laid down by the Court of Appeals, maintain the same level of domestic earnings under uniform domestic mail rates as can its domestic competitors who have no international services to which their earnings must be diverted. Under such circumstances, the more limited level of domestic earnings of those carriers which operate both types of service would provide a higher floor to domestic passenger and cargo rates than would otherwise be the case—unless, alternatively the Board should increase the domestic mail rates of such carriers to make up their earnings deficiencies. In either event, public advantages inherent in lower passenger and cargo rates or in uniform mail rates are adversely affected.

The Civil Aeronautics Board in its mail rate proceedings has classified the international and domestic services of a single air carrier as different classes of services for rate-making purposes, as authorized by Section 406 of the Act, and has thus treated such services as constituting separate rate making units.[6] On this premise it has not offset earnings between the two classes of services. The Board has thereby geared its rate-making process to the preservation of the basic conditions believed by it to be essential to the support of the public interest objectives described above.

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[6] It has done this in all cases where the international services were substantial as compared to the total operations of the air carrier.

The court below says that the Board was in error in that respect. The reversal by the divided court below of this well established construction of the statute by the Board, which will result in widespread public dislocations in the field of international air operations, justifies the Supreme Court in granting the requested review.

2. The Decision of the Majority of the Court Below Establishes a Construction of the Civil Aeronautics Act Which is in Direct Conflict With the Decision of the Supreme Court in Transcontinental & Western Air, Inc. v. Civil Aeronautics Board, 336 U.S. 601 (1949).

The principles laid down by the decision of the court below are directly contrary to those laid down by the Supreme Court in *Transcontinental & Western Air, Inc. v. Civil Aeronautics Board,* 336 U.S. 601 (1949). In that decision, this Court held that in fixing mail rates for air carriers the Board was without statutory authority to revise an air carrier's mail rates retroactively to a date prior to the institution of the rate proceeding. In the present case, however, the court below holds that the statute authorizes the recapture of the earnings made by C&S for a past period under final domestic mail rates which were closed and with respect to which no proceedings for review were pending.

Final domestic mail rates for C&S were fixed by the Board in July 1948, effective January 1, 1948, and these rates remained in effect and unchallenged, with no proceeding pending seeking their revision, during each of the years 1948, 1949, and 1950. The earnings of C&S during those years fell well within the allowable rate of return established by the Board's incentive scale (see footnote 3, *supra*). In the present case, involving a proceeding instituted only for the purpose of fixing international mail rates for C&S, two of the three judges in the Court of Appeals hold that the Board, in issuing its order of October 18, 1951, fixing only the international rates, must offset against those rates, and in effect recapture from the

carrier, earnings under its closed domestic rates during the years 1948, 1949, and 1950. This clearly violates the holding in *Transcontinental & Western Air, Inc. v. Civil Aeronautics Board, supra,* that the statute does not authorize the review of closed rates.

The direct nature of the conflict between the decision of the court below and the *TWA Case* is shown clearly by the existing situation with respect to TWA's own mail rates. In the *TWA Case* the Court had before it a Board proceeding arising on a Petition filed by TWA on March 14, 1947 asking for an increase in its domestic mail rates effective from January 1, 1946. The Board held that it was without power to revise TWA's domestic rates for the period prior to March 14, 1947, and the Supreme Court affirmed. However, TWA's international mail rates for the period since February 5, 1946 are now still open in another proceeding pending before the Board. A logical application of the Court of Appeals decision would require that the same domestic rates of TWA for the same period which the Supreme Court said were beyond the Board's power to review directly in the original *TWA Case,* now must be reviewed indirectly in the process of retroactively offsetting earnings of TWA's domestic services against its international "need" during that period. No financial stability, no accurate credit rating, no stable balance sheet position, no dividend policy, and no ability to raise private capital can struggle through such quicksands as are piled up by the decision of the court below.

The decision of the court below erroneously sanctions a cost-plus system of rate fixing contrary to the basic concepts of the statute which the Supreme Court enunciated in the *TWA Case.* If all closed rates are to be reviewed in finalizing an open class of service rate, there is no incentive to do well under the closed rate. In reaching its conclusion in the *TWA Case,* the Court expressed the view that:

> "Petitioner's reading of the Act would in practical effect have the tendency to transform it into a cost-

> plus system of regulation, a construction which would not harmonize with the apparent design of the Act . . .". (336 U. S. at p. 606).

Under the principles of the decision of the court below, the air carrier operating both international and domestic services can find its entire system rates for both classes of service subject to adjustment long after the domestic rates have been closed. Under such a regime all incentive to economy and efficiency in domestic operations is lost. The Post Office Department in fact is currently contending, in certain mail rate proceedings now pending before the Board and involving the future rates of such air carriers, that the Board must implement the Court of Appeals decision by setting up mechanics whereby offsets will be automatically made in the future between domestic and international earnings or whereby earnings above some minimum level otherwise will be immobilized.

3. The Decision of the Majority of the Court Below is Directly Contrary to the Well-Established Construction of the Civil Aeronautics Act by the Civil Aeronautics Board.

A question of interpretation of the Civil Aeronautics Act is involved which the court below has resolved by rejecting a methods of rate-fixing which has been consistently followed by the Civil Aeronautics Board in fixing mail rates for an air carrier operating both domestic and international air services.

The decision of the majority of the court below rests on an extremely narrow, clearly unjustified, and erroneous interpretation of the Board's rate-fixing powers under the statute. While the court concedes, as it must, that the statute expressly authorizes the Board to fix different mail rates for different classes of service, the court denies any substance to that grant of authority by ruling that in fixing the rate for one class of service the Board must consider, and include in its computation, the earnings from all classes of service operated by the carrier. Such a qualification

upon the power to fix different rates for different classes of service makes the statutory grant of power meaningless.

As Judge Prettyman observes in his dissenting opinion below, the concept of fixing different rates for different classes of service clearly contemplates that a rate for a particular class of service may be fixed upon the basis of the revenues, expenses, and other factors relating to that class of service and no other service.

The court below in undertaking to quote a portion of the statute left out certain words necessary to convey its proper meaning and thus reveals one way in which the court erred. The majority opinion says, in effect, that the court thinks it is "the duty of the Board in fixing 'fair and reasonable rates of compensation' under § 406(b) in each case to 'take into consideration, among other factors, . . . all other revenue of the air carrier' ". (R. 72, second full paragraph on the page.) This quotation suggests offset to the mind. The statute properly quoted does not. Section 406(b) provides (see the Appendix hereto) that in determining the rate in each case the Board "shall take into consideration, among other factors, . . . the need of each such air carrier for compensation for the transportation of mail sufficient . . . together with all other revenue of the air carrier, to enable such air carrier . . . " (emphasis added) to accomplish certain important developmental objectives as revealed by the full language of Section 406(b) of the Act. As Judge Prettyman said in his dissent below:

> " . . . It is noteworthy that the statute does not describe need as the remainder after all other revenue is deducted. The statute does not speak of offsets or deductions. The statute is affirmative in its prescription. It speaks of compensation which 'together with' all other revenue will enable the carrier, etc. This is language appropriate to a measure of discretion in respect to the particular carrier and to the particular service . . . " (R. 77).

The whole statutory emphasis is upon meeting the developmental need. The reference to "other revenue" is entirely incidental thereto. Obviously, a discretionary concept, rather than one of mandatory offset, is intended. The language simply cannot be quoted grammatically in the manner attempted by the court below.

The court below refuses to recognize that the statute authorizes the Board to give weight to overall public interest objectives in fixing mail rates and in determining rate-fixing methods. Although the opinion of the Board in this case describes in detail the public interest considerations which have lead the Board to conclude that mail rates for domestic and international services should be fixed as separate rate-making units without offset of earnings between them (R. 19-21; and 54-55), the court below, without denying the existence and force of these considerations, holds that the Board was not authorized by the statute to give weight to them in fixing the carrier's international rates. The court's conclusion clearly is inconsistent with the language of Section 2 of the Act (see the Appendix hereto) and with the language of Section 406 of the Act which directs and authorizes the Board to take into account broad considerations in fixing mail rates. For example, the first sentence of Section 406(b) provides:

> "In fixing and determining fair and reasonable rates of compensation under this section, the Board, *considering the conditions peculiar to transportation by aircraft and to the particular air carrier or class of air carriers,* may fix different rates for different air carriers or classes of air carriers, and different classes of service". (emphasis added).

A subsequent portion of Section 406(b) provides that:

> "In determining the rate in each case, the Board shall take into consideration, among other factors, . . . the need of each such air carrier for compensation for the transportation of mail sufficient to insure the per-

formance of such service, and, together with all other revenue of the air carrier to enable such air carrier under honest economical, and efficient management, to *maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense.*" (emphasis added).

Such broad statutory directives clearly authorize the Board to frame its rate-fixing method in this case upon the basis of the considerations of public interest which the Board in its opinion found were applicable to this case.

CONCLUSION

The decision by the divided court below will change, importantly, if not reverse completely, the national policy of the United States developed during a long period of careful consideration which has placed a number of domestic air carriers in the field of international air operations; that decision is inconsistent with the principles and the decision laid down by the Supreme Court in *Transcontinental & Western Air, Inc. v. Civil Aeronautics Board,* 336 U. S. 601 (1949) forbidding the review of closed rates and repudiating the theory of a cost-plus system of rate fixing; and that decision over-ruled well-established constructions of the Civil Aeronautics Act affecting the broad public interest placed upon the Act by the administrative agency charged with its administration.

The importance of the air transportation system of international and domestic services to the national defense and to the public interest of the nation generally is universally accepted. The decision of the court below in a divided opinion so importantly and adversely affecting areas of broad public interest as referred to above, should not be permitted to stand without review by the Supreme Court.

WHEREFORE, Petitioner prays that a writ of certiorari

issue with a view to causing the decision below to be reviewed by this Court.

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APPENDIX

The Civil Aeronautics Act of 1938, 52 Stat. 977, as amended, 49 U.S.C. 401, *et seq.*, provides in part as follows:

"Declaration of Policy

"SEC. 2 [52 Stat. 980, 49 U.S.C. 402] In the exercise and performance of its powers and duties under this Act, the [Board] * * * shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity—

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(e) The regulation of air commerce in such manner as to best promote its development and safety; and

(f) The encouragement and development of civil aeronautics."

* * * *

"Rates for Transportation of Mail

"Authority to Fix Rates

"Sec. 406 [52 Stat. 998, 49 U.S.C. 486] (a) The [Board * * * is empowered and directed, upon its own initiative o upon petition of the Postmaster General or an air carrie (1) to fix and determine from time to time, after notic and hearing, the fair and reasonable rates of compensa tion for the transportation of mail by aircraft, the facil ties used and useful therefor, and the services connecte therewith * * * by each holder of a certificate authorizin the transportation of mail by aircraft, and to make suc rates effective from such date as it shall determine to b proper; (2) to prescribe the method or methods, by ai craft-mile, pound-mile, weight, space, or any combinatio thereof, or otherwise, for ascertaining such rates of com pensation for each air carrier or class of air carriers; an (3) to publish the same; and the rates so fixed and dete mined shall be paid by the Postmaster General from appr priations for the transportation of mail by aircraft.

"Rate-Making Elements

(b) In fixing and determining fair and reasonable rat of compensation under this section, the [Board] * * *, co sidering the conditions peculiar to transportation by ai craft and to the particular air carrier or class of air ca riers, may fix different rates for different air carriers o classes of air carriers, and different classes of service. I determining the rate in each case, the [Board] * * * sha take into consideration, among other factors, the conditio that such air carriers may hold and operate under certif cates authorizing the carriage of mail only by providin necessary and adequate facilities and service for the tran portation of mail; such standards respecting the characte and quality of service to be rendered by air carriers as ma be prescribed by or pursuant to law; and the need of eac such air carrier for compensation for the transportatio of mail sufficient to insure the performance of such servic and, together with all other revenue of the air carrier, t enable such air carrier under honest, economical, and eff cient management, to maintain and continue the develop ment of air transportation to the extent and of the charac ter and quality required for the commerce of the Unite States, the Postal Service, and the national defense."

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